

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 88172-001

v

Midwest Security Life Insurance Company
Respondent

Issued and entered
This 21st day of April 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 27, 2008, **XXXXX** (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on March 5, 2008.

The Commissioner notified Midwest Security Life Insurance Company (Midwest) of the external review and requested the information used in making its adverse determination.

Because this case involves medical issues, the Commissioner assigned it to an independent review organization which provided its analysis and recommendation to the Commissioner on March 17, 2008.

II
FACTUAL BACKGROUND

The Petitioner was diagnosed with cancer and had a prostatectomy. Following surgery, his urologist prescribed the prescription drug Cialis. Midwest denied coverage for the Cialis on the basis that it is excluded under the terms of the Petitioner's coverage.

The Petitioner appealed the denial through Midwest's internal grievance process. Midwest reviewed the appeal but maintained its denial and issued a final adverse determination dated January 22, 2008.

III ISSUE

Is Midwest correct in denying coverage for Cialis under the terms of the Petitioner's coverage?

IV ANALYSIS

Petitioner's Argument

On October 10, 2007, the Petitioner underwent a radical retropubic prostatectomy. Following surgery his oncologist prescribed Cialis. The Petitioner says the Cialis was prescribed to return blood flow to the penis and not for erectile dysfunction. He says the Cialis is medically necessary and should be covered because cancer was the reason for the surgery and the surgery is the reason he needs the medication.

In an undated letter, **XXXXX**, MD, the Petitioner's urologist, wrote: "We have prescribed him Cialis 10-20 mg PRN to use for his erectile dysfunction. Erectile Dysfunction is one of the side effects of the above surgery."

The Petitioner believes that the Cialis is medically necessary and therefore Midwest should provide coverage.

Midwest Security Life Insurance Company's Argument

In its adverse determination, Midwest said that "this medication is not a covered prescription drug under your plan." Midwest says the Petitioner's certificate of coverage, the

contract that defines his health care benefits, has this exclusion related to medications for the treatment of sexual dysfunction:

- (22) All charges relating to infertility diagnosis and treatment (including medications), artificial insemination, invitro fertilization, any treatment to promote conception and related tests/procedures; services, supplies, or treatment including drugs, related to erectile dysfunction or inadequacy and sex transformations; charges for contraceptives, contraceptive materials or devices. [Underlining added]

Midwest argues that Cialis is excluded and therefore not eligible for coverage.

Commissioner's Analysis

The Petitioner's certificate of coverage specifically excludes medications for erectile dysfunction (pp. 32-33). The Petitioner says that Cialis was medically necessary to return blood flow to the penis and was not prescribed for erectile dysfunction. In reviewing adverse determinations that involve medical issues, the Commissioner requests a review and recommendation from an independent review organization (IRO). In this case the IRO reviewer is board certified in urology. It was the IRO reviewer's conclusion that Midwest's denial of coverage for Cialis be upheld.

The IRO reviewer said:

[T]he use of Cialis to treat the patient's post-prostatectomy condition, other than erectile dysfunction than may have resulted, is not medically necessary. According to information from the manufacturer, Cialis is a phosphodiesterase 5 (PDE 5) inhibitor indicated for erectile dysfunction. There is no known primary benefit form treatment with phosphodiesterase 5 (PDE 5) inhibitors for patients with cancer of the prostate beyond potential improvement of erectile dysfunction.

The IRO reviewer concluded that Cialis has no other benefit for patients with prostate cancer than improvement of erectile dysfunction. The Commissioner is not required in all instances to accept the IRO's opinion. However, the IRO reviewer's opinion is afforded deference by the Commissioner since it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why the recommendation should be

rejected in this case. Moreover, the Commissioner notes that the Petitioner's urologist said the Cialis was prescribed for erectile dysfunction, and there was nothing else in the record that would establish that it was prescribed or useful for any other purpose.

Based on the record and the IRO reviewer's opinion, the Commissioner finds that the use of the drug Cialis in Petitioner's case is for erectile dysfunction and therefore it is excluded from coverage under the terms and conditions of the certificate.

**V
ORDER**

The Commissioner upholds Midwest Security Life Insurance Company's January 22, 2008, final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.